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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/989,352	12/12/1997	STEPHEN B. MAGUIRE	1147-97	8734

7590 01/07/2002

CHARLES N. QUINN, ESQ.
FOX, ROTHSCHILD, O'BRIEN & FRANKEL, LLP
2000 MARKET STREET
TENTH FLOOR
PHILADELPHIA, PA 19103-3291

EXAMINER

COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
1723	

DATE MAILED: 01/07/2002

3/

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 08/989,352	Applicant(s) Maguire
	Examiner Charles Cooley	Art Unit 1723
		
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>		
Period for Reply		
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p>		
<ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). - Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). 		
Status		
<p>1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>4 Apr 2001</u></p>		
<p>2a) <input type="checkbox"/> This action is FINAL. 2b) <input checked="" type="checkbox"/> This action is non-final.</p>		
<p>3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11; 453 O.G. 213.</p>		
Disposition of Claims		
<p>4) <input checked="" type="checkbox"/> Claim(s) <u>1-58</u> is/are pending in the application.</p>		
<p>4a) Of the above, claim(s) <u>54-58</u> is/are withdrawn from consideration.</p>		
<p>5) <input type="checkbox"/> Claim(s) _____ is/are allowed.</p>		
<p>6) <input checked="" type="checkbox"/> Claim(s) <u>1, 6, and 9-53</u> is/are rejected.</p>		
<p>7) <input checked="" type="checkbox"/> Claim(s) <u>2-5, 7, and 8</u> is/are objected to.</p>		
<p>8) <input checked="" type="checkbox"/> Claims <u>1-58</u> are subject to restriction and/or election requirement.</p>		
Application Papers		
<p>9) <input checked="" type="checkbox"/> The specification is objected to by the Examiner.</p>		
<p>10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.</p>		
<p>11) <input checked="" type="checkbox"/> The proposed drawing correction filed on <u>4 Apr 2001</u> is: a) <input checked="" type="checkbox"/> approved b) <input type="checkbox"/> disapproved.</p>		
<p>12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.</p>		
Priority under 35 U.S.C. § 119		
<p>13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).</p>		
<p>a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of:</p>		
<p>1. <input type="checkbox"/> Certified copies of the priority documents have been received.</p>		
<p>2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____.</p>		
<p>3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</p>		
<p>*See the attached detailed Office action for a list of the certified copies not received.</p>		
<p>14) <input checked="" type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).</p>		
Attachment(s)		
<p>15) <input type="checkbox"/> Notice of References Cited (PTO-892) 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____</p>		
<p>16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p>		
<p>17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). <u>18</u> 20) <input type="checkbox"/> Other: _____</p>		

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OFFICE ACTION

1. This application remains assigned to Technology Center 1700, Art Unit 1723

and the following will apply for this application:

a. Please direct all written correspondence with the correct application

serial number for this application to Art Unit 1723.

b. Telephone inquiries regarding this application should be directed to the

Technology Center 1700 receptionist at ~~(703)~~ 308-0651 or to the Examiner at ~~(703)~~

308-0112. Official facsimile correspondence filed before a final office action should be

transmitted to ~~(703)~~ 872-9310. Official facsimile correspondence which responds to a

final office action should be transmitted to ~~(703)~~ 872-9311.

c. Inquiries regarding application status, matching responses with applications, patent term questions, locating and retrieval of applications, incomplete office actions, requests for copies of office actions and/or references, requests to remail office actions, small/large entity status, or other administrative inquiries should be directed to the **Technology Center 1700 Customer Service Center** at ~~(703)~~ 306-5665.

Election/Restriction

2. Applicant's election with continual traverse of Group I - claims 1-53 in Paper

Nos. 15 and 22 is acknowledged. The traversal is on the ground(s) that the restriction

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is improper. This is not found persuasive because Group I and Group II are clearly related as combination and subcombination and restriction is proper between the groups as outlined in MPEP 806.05(c).

The requirement is still deemed proper and is therefore made FINAL.

3. Claims 54-58 are thereby withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, the requirement having been traversed in Paper No. 15.

Information Disclosure Statement

4. Note the attached PTO-1449 forms (6 sheets) submitted with the Information Disclosure Statements.

Drawings

5. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 04 APR 2001 have been approved by the Examiner.

Specification

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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7. The disclosure is objected to because of the following informalities:

a. The amendments to the specification filed 04 APR 2001 does not comply with the recent revision of 37 CFR 1.121. The amendments to the specification appearing on pages 2-4 of the response filed 04 APR 2001 were not provided in paragraph form with a corresponding marked up copy and consequently were not entered. All such amendments must be resubmitted in proper form if Applicant desires entry of the revisions. Since the amendments were not entered, the previous objections from the last office action are repeated:

b. the missing application data on page 1, first paragraph of the specification should be provided.

c. Page 1, last line appears to be missing text since the first line on page 2 begins a new sentence.

d. Page 2, last line: it appears "component" should be --compartment--.

e. Page 24, line 4: the status of the referenced application should be updated.

Appropriate correction is required.

8. The abstract is acceptable.

9. The title is acceptable.

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Claim Objections

a. Claims 1-53 are objected to as not being in compliance with 37 CFR 1.121 because various claims are written inconsistently between the clean and marked up copies thereof. For example, compare the marked up copies and clean copies of claims 6, 36, 41, and 46 and note the discrepancies between the two sets of claims. For purposes of this office action, all objections and rejections refer exclusively to the clean copies of the claims.

b. Claim 22 lacks ending punctuation.
c. Claim 36 (clean copy) is objected to because in line 15, it appears "an" should be --a--.

Correction is required.

Claim Rejections - 35 U.S.C. § 112

10. The clean copies of claims 6, 9-35 and 41-53 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6, line 1: "said vertically extending surfaces" lacks antecedent basis - change to --said upwardly extending surfaces--. Note claim 3, line 1 and note claim 7.

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Claim 9, line 3: "said housing" lacks antecedent basis; in line 4, "the housing" lacks antecedent basis. Applicant should review the claims to ensure consistency between recitations of the frame and the housing.

Claim 16: does the "valve means" have any relationship to the material dispensing means of claim 9? Note claim 10.

Claim 17, line 1: "said actuating means" lacks antecedent basis - change to --said valve actuation means-- to agree with claim 16; in line 2, "said valve" lacks antecedent basis - change to --said valve means--.

Claim 18, line 1: "said actuating means" lacks antecedent basis - change to --said valve actuation means-- to agree with claim 16; in line 2, "said hopper wall" lacks antecedent basis.

Claim 25: "said housing" lacks antecedent basis.

Claim 26: "said openable portion" lacks antecedent basis.

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Claim 27, line 1: replace “an operator” with --a bin operator-- to agree with claim 28.

Claim 41, line 14: “said mixer” lacks antecedent basis.

Claim 46 is worded in an awkward manner - compare to the marked up copy.

11. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

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Double Patenting

12. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

13. Claims 1 and 36-42 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-2, 28-34, and 53-54 of copending Application No. 09/076,498. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Allowable Subject Matter

14. Claims 9-35 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

15. Claims 6 and 43-53 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

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16. Claims 2-5 and 7-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Amendment

17. Applicant's arguments with respect to the pending claims have been considered but are deemed to be moot in view of the new grounds of rejection.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Charles Cooley whose telephone number is ~~(703) 308-0112~~.

19. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1700 receptionist whose telephone number is ~~(703) 308-0651~~.



Dated: **4 January 2002**

Charles Cooley
Primary Examiner
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